

UNITED STATES DISTRICT COURT

for the
Western District of Washington

In the Matter of the Search of
 (Briefly describe the property to be searched
 or identify the person by name and address)
 The premises at 926 North 85th St Seattle,
 Washington 98103, more fully described in
 Attachment A

Case No. MJ20-004

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

The premises at 926 North 85th St Seattle, Washington 98103, more fully described in Attachment A

located in the Western District of Washington, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. §§ 922(g)(1) & 371	Felon in Possession of a Firearm and Conspiracy
26 U.S.C. 5861(d)	Unlawful Possession of a Firearm

The application is based on these facts:

- ☒ See Affidavit of Special Agent Shawn Galetti, continued on the attached sheet.

- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Pursuant to Fed. R. Crim. P. 4.1, this warrant is presented: ☒ by reliable electronic means; or: ☐ telephonically recorded.



Applicant's signature

Shawn Galetti, HSI Special Agent

Printed name and title

- ☒ The foregoing affidavit was sworn to before me and signed in my presence, or
☐ The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit by telephone.

Date: January 8, 2020



Judge's signature

City and state: Seattle, Washington

Brian A. Tsuchida, Chief United States Magistrate Judge

Printed name and title

1 4. I seek authorization to seize the items from the SUBJECT PREMISES that
2 are described in Attachment B to this affidavit, which is incorporated herein by
3 reference.¹

4 5. The facts set forth in this Affidavit are based on my own personal
5 knowledge; information obtained from other individuals during my participation in this
6 investigation, including other law enforcement officers; interviews of cooperating
7 witnesses; review of documents and records related to this investigation; communications
8 with others who have personal knowledge of the events and circumstances described
9 herein; and information gained through my training and experience.

10 6. Because this Affidavit is submitted for the limited purpose of establishing
11 probable cause in support of the application for a search warrant, it does not set forth
12 each and every fact that I, or others, have learned during the course of this investigation.

13 **RELEVANT LAW**

14 7. Title 18, United States Code, Section 922(g)(1) prohibits a felon from
15 possessing a firearm that traveled in interstate commerce. Under Title 18, United States
16 Code, Section 921(a)(3)(C), the term “firearm” includes “any firearm muffler or
17 silencer.” Under Title 18, United States Code, Section 921(a)(24), the “terms “firearm
18 silencer” and “firearm muffler” mean “any device for silencing, muffling, or diminishing
19 the report of a portable firearm, including any combination of parts, designed or
20 redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm
21 muffler, and any part intended only for use in such assembly or fabrication.”

22 8. Title 26, United States Code, Section 5861(d), prohibits a person to receive
23 or possess a firearm not registered to the person in the National Firearms Registration and
24 Transfer Record. A silencer, as defined above, is a type of firearm under this provision.²

25 9. Title 18, United States Code, Section 545, prohibits fraudulently or
26 knowingly importing or bringing into the United States, any merchandise contrary to law.

27
28 ¹ I am not seeking authority to search any digital devices at this juncture.

² This affidavit uses the term “silencer” to refer both to the Title 18 and Title 26 provisions cited under this section.

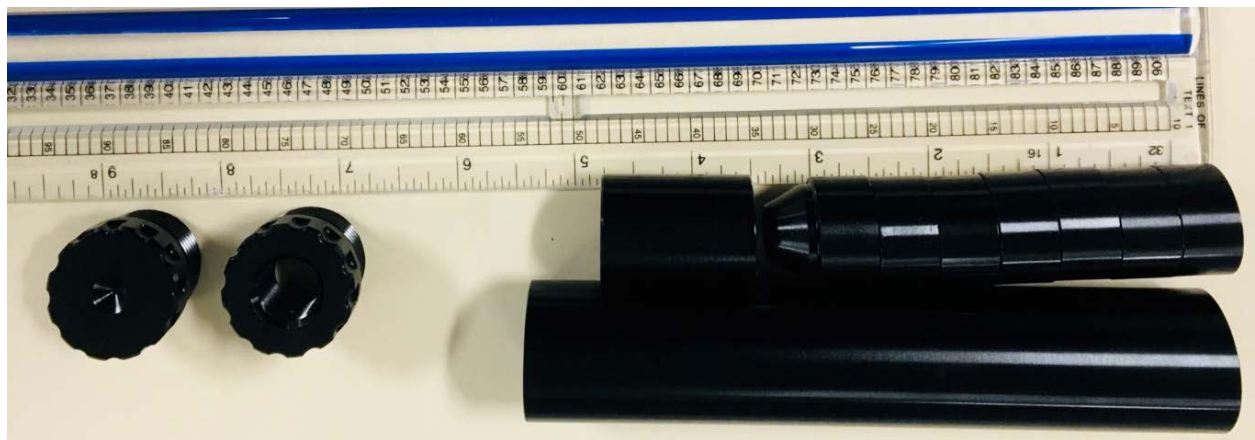
1 10. Title 18, United States Code, Section 371 prohibits two or more persons
2 from conspiring to violate federal law, and taking an overt act in furtherance of the
3 conspiracy.

4 **SUMMARY OF INVESTIGATION**

5 **A. The Seized Package**

6 11. On December 29, 2019, a Customs and Border Protection officer conducted
7 a border inspection of a package that was addressed to David Kubala at the SUBJECT
8 PREMISES. As discussed below, Kubala is a convicted felon. The package had been
9 shipped from China. The package label described the package as containing a
10 “percolator.” The shipper was listed as “Chenfangfang.” Since November 2019, agents
11 have seized over 500 packages from this shipper from the same or similar Chinese
12 address. These packages all contained silencers, or items suspected of being silencers.
13 The packages contained shipping labels that falsely described the items as containing
14 items such as a “fuel filter,” “oil intake,” and “gear shift knob.”

15 12. The package addressed to Kubala contained a black tube that comprised of
16 multiple baffles and end-caps with a center mark indicated:
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13. I have examined this device with Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent Nate Merritt. Special Agent Merritt has received specialized training on firearms, which includes training on silencers. We also reviewed a report published by the ATF Firearms Technology Criminal Branch that examined a device that was sent by the same shipper.³ The report describes the device as follows:

³ Examiners with the Firearms Technology Criminal Branch receive training and have experience as to what constitutes a “silencer” under federal law.

1 The tube or body of Exhibit 1 appears to be manufactured from a length of aluminum tubing and creates an
 2 **expansion chamber** when assembled with the other components. Each end of the body contains threads
 3 compatible with the two end-caps of the device.

4 There are two **end-caps** on the body of the Exhibit. The front end-cap does not have a center hole; it is marked
 5 on the interior and exterior to indicate the correct location to drill the center hole. The rear end-cap has a center
 6 hole containing 5/8x24TPI threads, which is a size common to threaded firearm barrels.

7 My examination of the interior of the device was accomplished by disassembly. Disassembly revealed that the
 8 interior of the device consists of eight "K" baffles and that it is designed to function as a firearm silencer (see
 9 attached photos). The Exhibit 1 baffles are similar to those described in the attached U.S. Patent 8,991,550.

10 The Exhibit's **baffles** are designed and intended to partition the larger expansion chamber of the device thereby
 11 creating multiple smaller expansion chambers. As received, the Exhibit 1 baffles do not have center holes and,
 12 therefore, the device cannot be tested. However, the machining process used in the manufacture of the baffles
 13 shows the proper point to drill the center holes (see attached photos).

14 A mark or reference point that indicates the center of the part is advantageous when drilling center holes in
 15 baffles and end-caps. The holes need to be centered to minimize the potential of a bullet striking one of these
 16 components when it passes through a silencer. Typically, the center holes are made larger than the bore of the
 17 firearm to which the silencer will be attached to allow for error in alignment. The closer the size of the center
 18 hole is in relation to the bullet diameter (or caliber of the firearm bore) the greater the efficiency of the silencer
 19 will be. Center holes are typically approximately 0.030" to 0.080" larger than the bore to accommodate some
 20 error or deviation between the path of the bullet and the center of the silencer.

21 To complete the manufacture of this silencer, the center holes in the baffles and the front end-cap must be
 22 drilled. As the device is manufactured from aluminum and the centers of these parts are easily identifiable, the
 23 center holes could be completed in a matter of minutes using a hand drill or drill press.

24 While the manufacture is not complete, the features and characteristics of Exhibit 1 are consistent with those of
 25 known firearm silencers I have observed. Devices such as these are commonly marketed on the Internet as
 26 "solvent traps," "solvent trap accessories," or "dry storage containers." Such tongue-in-cheek advertisements
 27 sometimes include an "NFA Warning" or a legal disclaimer regarding the use or modification of these devices
 28 as, or in the fabrication of, firearm silencers. The inclusion of these disclaimers or statements, as well as
 customer comments and reviews, suggests the seller's knowledge of the intended use of the items.

14. The report concludes that the device is a silencer, both under Titles 18 and
 26.

15. Special Agent Merritt and I have examined the device that was intended for
 Kubala, and compared it to the device that is described in the report. The two devices are
 identical in all material respects, *i.e.*, it has the same components and characteristics that
 are highlighted above in the report.⁴ Thus, based on my training and experience, along

⁴ The two devices are not completely identical. The device seized is black in color, while the device in the report is silver. The device seized is smaller—intended for a handgun—while the device in the report is bigger—intended for a rifle.

1 with the training and experience of Special Agent Merritt, I believe that the device is a
2 silencer. Special Agent Merritt shares this belief.

3 **B. David Kubala's Criminal History and Residence**

4 16. I have reviewed the criminal history for David Kubala. Kubala has eight
5 felony convictions from the State of Washington for burglary, theft, and malicious
6 mischief convictions. His convictions span from 1997 to 1999. He was sentenced on
7 multiple occasions to terms of imprisonment in excess of a year, including to 68 months
8 in 1999.

9 17. As a felon, Kubala does not have any firearms registered to him in the
10 National Firearms Transfer Record, including any silencers.

11 18. A record check with Washington State Department of Licensing revealed
12 that Kubala first updated his address to the SUBJECT PREMISES on September 2018
13 and renewed his driver's license again on July 25, 2019 to the same address. On
14 December 13, 2019, ATF SA Nate Merritt drove by the SUBJECT PREMISES and
15 observed a white Dodge pickup registered to Kubala at the SUBJECT PREMISES. SA
16 Merritt has driven by the SUBJECT PREMISES on multiple other occasions and
17 observed the same Dodge pickup. According to Facebook, Kubala has a business,
18 "Nimis Marine," advertised on Facebook. The business address is described as being the
19 SUBJECT PREMISES. Kubala's name and cell phone number also are listed for the
20 business.⁵

21 19. A query of the King County property records shows the SUBJECT
22 PREMISES is a two-story, two-bedroom, two-bathroom home with a living area of 1360
23 square feet. The premises includes a garage. During surveillance, agents have observed
24 vehicles parked on the property, notably what appears to be a van or truck, as depicted in
25 the following photograph:

26 _____

27 ⁵ According to a records check, Kubala has received other packages directly from China at the SUBJECT
28 PREMISES. At this point, I have no indication that any of these packages contained contraband.



20. I seek authorization to search the entire premises, to include the garage, and any vehicles parked on the property.

C. Kubala's Prior Failed Gun Purchase

21. On January 3, 2020, ATF Special Agent Nate Merritt received a copy of ATF Form 4473 from Sportsman's Warehouse in Federal Way, WA and the ATF NICS Referral Application Field Office Referral Report. The 4473 form was dated August 15, 2015, and had been filled out by Kubala when attempting to purchase a Benelli, Nova, 12 gauge, shotgun. The National Instant Criminal Background Check System denied this transaction on August 21, 2015, based on Kubala's felony convictions. When filling out the 4473 form, on question 11.c., Kubala was asked, "Have you ever been convicted in any court of a felony, or any other crime for which the judge could have imprisoned you

1 for more than one year, even if you received a shorter sentence including probation?"


2 Kubala falsely answered question 11.c by checking the box for "NO."

3 **D. Training and Experience**

4 22. Based on my training and experience, I know that persons who order items,
5 even contraband, from overseas, often retain records relating to the order. I also know
6 that persons who order silencers almost always purchase them to use with an existing
7 firearm. I also know that persons typically store their own firearms in their personal
8 residence and vehicles. Finally, I know, based on my training and experience, and
9 discussions with Special Agent Merritt, that the overwhelming percentage of firearms
10 found in the State of Washington, were manufactured outside the State of Washington.

11 **CONCLUSION**

12 23. For the foregoing reasons, I seek authority to search the SUBJECT
13 PREMISES for the items described in Attachment B.

14 
15 SHAWN GALETTI, Affiant
16 Special Agent, HSI
17

18 The above-named agent provided a sworn statement attesting to the truth of the
19 foregoing affidavit by telephone on 8th day of January, 2020.

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21
22 BRIAN A. TSUCHIDA
23 Chief United States Magistrate Judge
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ATTACHMENT A
PREMISES TO BE SEARCHED

The premises to be searched is 926 North 85th St Seattle, Washington 98103.
The following is a picture of the premises:



The premises to be searched includes the garage and any vehicles parked on the premises.

ATTACHMENT B
ITEMS TO BE SEIZED

All documents and items reflecting evidence and/or fruits of the commission of the crimes of (1) felon in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(1); (2) unlawful possession of a firearm, in violation of Title 26, United States Code, Sections 5861(d); (3) conspiracy, in violation of Title 18, United States Code, Section 371, i.e.,:

1. Any firearms, firearms parts, and ammunition;
2. Any silencers, firearms mufflers, and suppressors;
3. Any documents reflecting any purchases or shipments from Chenfangfang;
4. Any documents reflecting any purchase or shipments from Zhejiang, China;
5. Documents sufficient to show dominion and control of the premises and areas searched.